

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isaiah Jacob Holmes, #278936,)	C/A No. 4:24-3255-MGL-TER
Plaintiff,)	
vs.)	ORDER
)	
Quandara Grant, Dana Aiken,)	
Major Natasha Robinson, Dr. Garmen,)	
Sergeant Black, Officer Joseph,)	
Crpl. Biel, Sergeant Bush,)	
Deb Szelpka, <i>Nurse Practitioner or Dr.</i>)	
<i>contracted with mediko,</i>)	
Defendants.)	

This is a civil action filed by a pretrial detainee. A serve order as to Defendants Aiken, Biel, Black, Bush, Grant, and Joseph was entered on July 31 2024, the remaining Defendants were recommended to be summarily dismissed, and summonses were issued. (ECF Nos. 20, 23). The summons as to Defendant Biel returned unexecuted. (ECF No. 39). The remaining summonses returned executed (ECF Nos. 27-30, 38). An attorney for the other Defendants answered and a scheduling order was entered. The Marshal's notation on the Form USM-285 indicated Defendant Biel could not be served after three endeavors, one being informed no longer employed at the Detention Center and the two other attempts at residential addresses weeks apart. (ECF No. 39).

On October 4, 2024, the court ordered Plaintiff to provide additional information to be able to serve Defendant Biel. (ECF No. 42). This case is before the Court because of Plaintiff's failure to comply with the magistrate judge's order of October 4, 2024. (ECF No. 42). A review of the record indicates that the magistrate judge ordered Plaintiff to submit additional information needed to complete service of process on Defendant Biel within 21 days, and specifically informed Plaintiff that if he failed to do so Defendant Biel would be subject to dismissal. The Court has not received an appropriate response from Plaintiff and the time for compliance has passed. Plaintiff

has not submitted additional information for the U.S. Marshals to serve Defendant Biel and three prior attempts to serve resulted in an unexecuted summons.

The mail in which the order was sent to Plaintiff at the address provided has not been returned to the court, thus it is presumed that Plaintiff received the order, but has neglected to comply with the order within the time permitted under the order.

Plaintiff's lack of response indicates an intent to not prosecute this case against Defendant Biel, and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a Plaintiff fails to comply with an order of the court); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*). A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied* 493 U.S. 1084 (1990) and *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant to Rule 41(b), the court is required to consider four factors:

- (1) the degree of plaintiff's responsibility in failing to respond;
- (2) the amount of prejudice to the defendant;
- (3) the history of the plaintiff in proceeding in a dilatory manner; and,
- (4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

In the present case, Plaintiff is proceeding *pro se* and he is entirely responsible for his actions. It is solely through plaintiff's own neglect, and not that of an attorney, that Plaintiff has not provided additional information in order to complete service on Defendant Biel. Plaintiff was previously warned that: "The providing of sufficient, accurate, and complete information on the Form USM-285 is the responsibility of Plaintiff." (ECF No. 42).

Accordingly, Defendant Biel is dismissed from this action without prejudice to Fed. R. Civ. Proc. 41(b) .

IT IS SO ORDERED.

November 18, 2024
Columbia, South Carolina

s/Mary Geiger Lewis
United States District Judge